

AMENDED IN ASSEMBLY MARCH 8, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 47

**Introduced by Assembly Members Wiggins and, Thomson, and
Alquist**

February 13, 2001

An act to amend Sections 1240.650 and 1245.250 of the Code of Civil Procedure, to amend Sections 56129 and 56133 of the Government Code, and to amend Sections 366 and 11652 of, and to add ~~Sections 851.1 and 1411.1~~ *Section 851.1* to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 47, as amended, Wiggins. Public utilities: public agencies.

(1) Under existing law, an authorized person may exercise the power of eminent domain to acquire property for a public use if, among other factors, the property sought is necessary, as defined. Existing law establishes the priority of uses of property with regard to their necessity. Existing law provides that where property has been appropriated to public use by any person other than a public entity, the subsequent use by a public entity for any public use is a more necessary use than the use to which the property had already been appropriated. Existing law provides that where the property that has been appropriated to a public use is electric, gas, or water public utility property that the public entity intends to put to the same use, the presumption that it is a more necessary use is a rebuttable presumption.

This bill would delete the applicability of the rebuttable presumption provision where the property to be appropriated is electric; *or gas*; ~~or~~

~~water~~ public utility property that the public entity intends to put to the same use.

(2) Under existing law, a person who desires to exercise the power of eminent domain to acquire property for a proposed project is required to establish that the public interest and necessity require the project, the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury, and the property sought is necessary for the project. Existing law provides that the above requirements are conclusively established by a resolution of necessity adopted by the governing body of the public entity. Existing law provides that where a local public entity is exercising the power of eminent domain over electric, gas, or water public utility property, that a resolution of necessity adopted by the governing body of the public entity creates a rebuttable presumption of the above requirements. Existing law provides that for purposes of these provisions, a taking by the State Reclamation Board for the Sacramento and San Joaquin Drainage District is not a taking by a local public entity.

This bill would delete the applicability of the rebuttable presumption provision to resolutions of necessity adopted by a governing body of a public entity where the local public entity is exercising the power of eminent domain over electric, ~~or gas, or water~~ public utility property.

(3) Existing law provides that if a public utility has been granted a certificate of public convenience and necessity authorizing it to furnish gas or electric service to a certain service area and the territory consisting of any part of that service area becomes a part of, or is formed into, a district authorized by its principal act to furnish gas or electric service, the district shall not furnish that service within the territory except upon approval by the local agency formation commission and by the voters within the territory.

This bill would ~~remove the requirement that the district~~ *delete the provision that requires the district to* have approval by the local agency formation commission prior to furnishing gas or electric service within that service area.

(4) Existing law authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it receives written approval from the local agency formation commission in the affected county, with certain exceptions. Existing law authorizes the local agency formation commission to authorize a city or district to provide new or extended services outside its jurisdictional boundaries to respond to an existing or impending



threat to the public health or safety of the residents of the affected territory if the entity applying for the contract approval has provided the local agency formation commission with documentation of that threat and the local agency formation commission has notified any alternate service provider that has filed a map and a statement of its service capabilities with the commission. Existing law requires the executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, to determine whether the request is complete and acceptable for filing and, if not, to transmit that determination to the requester, specifying the parts that are incomplete. When the request is complete, the executive officer is required to place the request on the agenda of the next local agency formation commission meeting. The local agency formation commission is required to approve, disapprove, or approve with conditions the contract for extended services.

This bill would exempt a local publicly owned electric utility, that provides electric services outside its jurisdictional boundaries and that has received approval by the Public Utilities Commission for the purchase of an electrical corporation's facilities pursuant to the provisions of the bill described in (6), from application of the above provisions.

(5) Existing law requires the Public Utilities Commission to take necessary action to facilitate direct transactions between electricity suppliers and end use customers. Existing law requires the commission to authorize all customer classes to voluntarily aggregate their electrical loads. Existing law requires a public agency that seeks to serve as a community aggregator on behalf of residential customers to offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

This bill would permit a public agency that seeks to serve as a community aggregator for direct access customers to provide aggregation service to all of the customers within its jurisdiction after a majority vote of its elected governing body. If a customer of the public agency desires to receive service from a different service provider, the bill would provide that the customer may do so upon written notice to the public agency and pursuant to the opt-out rules established by the public agency.

(6) Existing law prohibits any public utility from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering any part of its property necessary or useful in the performance of its duties



to the public without authorization from the Public Utilities Commission.

This bill would require the commission to issue an order approving the sale of an electrical *or gas* corporation's electric *or gas* distribution facilities if the purchaser is a local publicly owned electric *or gas* utility, the purchase price agreed to is equal to or greater than the just compensation that otherwise would be established, and the sale is otherwise in the public interest. The bill also would provide that there is a rebuttable presumption that a sale to a local publicly owned electric *or gas* utility is in the public interest.

~~(7) Existing law authorizes a political subdivision to file with the Public Utilities Commission a petition to acquire under eminent domain proceedings, or otherwise, the lands, property, and rights or any character of any public utility. Existing law requires the Public Utilities Commission to make and file its written findings establishing the just compensation to be paid by the political subdivision for the lands, property, and rights.~~

~~This bill would require the Public Utilities Commission, in establishing the just compensation to be paid by the political subdivision for the lands, property, and rights of an electrical corporation, to apply the book cost valuation method.~~

~~(8) Existing law authorizes any public agency together with unincorporated territory, or 2 or more public agencies, with or without unincorporated territory, may to organize and incorporate as a municipal utility district by filing of a resolution or petition, as specified. Existing law requires the board of supervisors to whom the resolution or petition is presented to call an election within the proposed district and to canvass the returns of each public agency and each parcel of unincorporated territory. The board of supervisors is required to order and declare the district created and established of the public agencies and territory in which a majority of those who voted did so in favor of the creation of the district if the total number of voters in the approving public agencies and territory is not less than $\frac{2}{3}$ the number of voters within the district as first proposed, according to the register used at the election.~~

This bill would delete the requirement that the total number of voters in the approving public agencies and territory be less than $\frac{2}{3}$ the number of voters within the district as first proposed, in order for the board of supervisors to order the district created where the majority of those who voted did so in favor of the creation of the district.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The furnishing of reliable, reasonably priced electric service is essential for the safety, health, and well-being of the people of California.

(b) The current lack of stability and rationality in California's electric market is attributable, in part, to an unwillingness and a lack of incentive on the part of the electrical corporations to manage a reasonably priced and diverse resource portfolio for their customers.

(c) Various legal impediments exist that operate as barriers to public agencies providing electric service to customers of the electrical corporations.

(d) Greater flexibility should be afforded public agencies to establish diverse energy resource portfolios and to provide reasonably priced electric service to customers of the electrical corporations.

SEC. 2. Section 1240.650 of the Code of Civil Procedure is amended to read:

1240.650. (a) Where property has been appropriated to public use by any person other than a public entity, the use thereof by a public entity for the same use or any other public use is a more necessary use than the use to which the property has already been appropriated.

(b) Where property has been appropriated to public use by a public entity, the use thereof by the public entity is a more necessary use than any use to which the property might be put by any person other than a public entity.

(c) *Where property that has been appropriated to a public use is water public utility property that the public entity intends to put to the same use, the presumption of a more necessary use established by subdivision (a) is a rebuttable presumption affecting the burden of proof, unless the acquiring public entity is a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code.*

SEC. 3. Section 1245.250 of the Code of Civil Procedure is amended to read:

1245.250. (a) Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030.

(b) *If the taking is by a local public entity, other than a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code, and the property is water public utility property, the resolution of necessity creates a rebuttable presumption that the matters referred to in Section 1240.030 are true. This presumption is a presumption affecting the burden of proof.*

(c) If the taking is by a local public entity and the property described in the resolution is not located entirely within the boundaries of the local public entity, the resolution of necessity creates a presumption that the matters referred to in Section 1240.030 are true. This presumption is a presumption affecting the burden of producing evidence.

(d) *For the purposes of subdivision (b), a taking by the State Reclamation Board for the Sacramento and San Joaquin Drainage District is not a taking by a local public entity.*

SEC. 4. Section 56129 of the Government Code is amended to read:

56129. (a) If a public utility has been granted a certificate of public convenience and necessity authorizing and requiring it to furnish gas or electric service within a certain service area and, as a result of a change of organization or a reorganization, territory consisting of all, or any part, of that service area becomes a part of, or is formed into, a district authorized by its principal act to furnish gas or electric service, the district shall not furnish that service within the territory except upon approval by the voters within the territory, given at an election as provided in Section 56130.

(b) If voter approval is given, upon assumption of service by the district the public utility may at any time thereafter withdraw service within the territory, unless otherwise ordered by the Public Utilities Commission.

(c) “Gas or electric service,” as used in this section and in Sections 56130, 56131, and 56875, means the distribution and sale

1 for any purpose, other than for the purpose of resale, of gas or
2 electricity for light, heat, or power.

3 SEC. 5. Section 56133 of the Government Code is amended
4 to read:

5 56133. (a) A city or district may provide new or extended
6 services by contract or agreement outside its jurisdictional
7 boundaries only if it first requests and receives written approval
8 from the commission in the affected county.

9 (b) The commission may authorize a city or district to provide
10 new or extended services outside its jurisdictional boundaries but
11 within its sphere of influence in anticipation of a later change of
12 organization.

13 (c) The commission may authorize a city or district to provide
14 new or extended services outside its jurisdictional boundaries and
15 outside its sphere of influence to respond to an existing or
16 impending threat to the public health or safety of the residents of
17 the affected territory if both of the following requirements are met:

18 (1) The entity applying for the contract approval has provided
19 the commission with documentation of a threat to the health and
20 safety of the public or the affected residents.

21 (2) The commission has notified any alternate service provider,
22 including any water corporation as defined in Section 241 of the
23 Public Utilities Code, or sewer system corporation as defined in
24 Section 230.6 of the Public Utilities Code, that has filed a map and
25 a statement of its service capabilities with the commission.

26 (d) The executive officer, within 30 days of receipt of a request
27 for approval by a city or district of a contract to extend services
28 outside its jurisdictional boundary, shall determine whether the
29 request is complete and acceptable for filing or whether the request
30 is incomplete. If a request is determined not to be complete, the
31 executive officer shall immediately transmit that determination to
32 the requester, specifying those parts of the request that are
33 incomplete and the manner in which they can be made complete.
34 When the request is deemed complete, the executive officer shall
35 place the request on the agenda of the next commission meeting
36 for which adequate notice can be given but not more than 90 days
37 from the date that the request is deemed complete, unless the
38 commission has delegated approval of those requests to the
39 executive officer. The commission or executive officer shall
40 approve, disapprove, or approve with conditions the contract for

1 extended services. If the contract is disapproved or approved with
2 conditions, the applicant may request reconsideration, citing the
3 reasons for reconsideration.

4 (e) This section does not apply to contracts or agreements
5 solely involving two or more public agencies where the public
6 service to be provided is an alternative to, or substitute for, public
7 services already being provided by an existing public service
8 provider and where the level of service to be provided is consistent
9 with the level of service contemplated by the existing service
10 provider. This section does not apply to contracts for the transfer
11 of nonpotable or nontreated water. This section does not apply to
12 contracts or agreements solely involving the provision of surplus
13 water to agricultural lands and facilities, including, but not limited
14 to, incidental residential structures, for projects that serve
15 conservation purposes or that directly support agricultural
16 industries. However, prior to extending surplus water service to
17 any project that will support or induce development, the city or
18 district shall first request and receive written approval from the
19 commission in the affected county. This section does not apply to
20 an extended service that a city or district was providing on January
21 1, 1994. This section does not apply to a local publicly owned
22 electric utility, as defined by Section 9604 of the Public Utilities
23 Code, providing electric services that do not involve the
24 acquisition, construction, or installation of electric distribution
25 facilities by the local publicly owned electric utility, outside of the
26 utility's jurisdictional boundaries. This section does not apply to
27 a local publicly owned electric utility that has received approval
28 from the Public Utilities Commission for the purchase of an
29 electrical corporation's facilities under Section 851.1 of the Public
30 Utilities Code.

31 SEC. 6. Section 366 of the Public Utilities Code is amended
32 to read:

33 366. (a) The commission shall take actions as needed to
34 facilitate direct transactions between electricity suppliers and end
35 use customers. Customers shall be entitled to aggregate their
36 electric loads on a voluntary basis, provided that each customer
37 does so by a positive written declaration. If no positive declaration
38 is made by a customer, that customer shall continue to be served
39 by the existing electrical corporation or its successor in interest.

(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, cities, counties, special districts or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers.

(c) Notwithstanding any other provision of law, including this chapter, a public agency that seeks to serve as a community aggregator for direct access customers of the electrical corporations may, after a majority vote of its elected governing body, provide aggregation service to all of the customers within its jurisdiction. If a customer of the public agency desires to receive service from a different service provider, it may do so upon written notice to the public agency and pursuant to the opt-out rules established by the public agency. Chapter 3 (commencing with Section 56100) of Part 1 of Division 3 of the Government Code does not apply to aggregation service provided by a public agency under this section.

SEC. 7. Section 851.1 is added to the Public Utilities Code, to read:

851.1. With respect to an electrical *or gas* corporation, the commission shall issue an order approving the sale of an electrical *or gas* corporation's electric *or gas* distribution facilities if all of the following is shown:

(a) The purchaser is a local publicly owned electric *or gas* utility.

(b) The purchase price agreed to by the electrical *or gas* corporation and the local publicly owned electric *or gas* utility is equal to or greater than the just compensation that otherwise would be established pursuant to Section 1411.1.

(c) The sale is otherwise in the public interest. There is a rebuttable presumption that a sale to a local publicly owned electric *or gas* utility is in the public interest.

~~SEC. 8. Section 1411.1 is added to the Public Utilities Code, to read:~~

~~1411.1. In establishing, in a single sum, the just compensation to be paid by the political subdivision for the lands, property, and rights of an electrical corporation, the commission shall determine the amount by applying the book cost valuation methodology.~~

1 ~~SEC. 9.~~

2 *SEC. 8.* Section 11652 of the Public Utilities Code is amended
3 to read:

4 11652. The board of supervisors shall canvass the returns of
5 each public agency and each parcel of unincorporated territory, if
6 any, separately, and shall order and declare the district created and
7 established of the public agencies and territory in which a majority
8 of those who voted on the proposition voted in favor of the creation
9 of the district.

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